Eyewitness reports, review of written records, and tips can greatly assist regulators in pursuing enforcement of refrigerant mishandling or discharges. In effect, the applicants provided this type of information to MOE, which should have constituted a valid starting point for an investigation.

Aside from an enforcement approach, the ECO believes there remain ways in which MOE could be demonstrating action on the regulation of ozone depleting substances. This application highlights an important but under-attended area of MOE's air quality program: the phase-out of ozone depleting substances. Many people believe that this phase-out was effectively complete shortly after the ratification of the Montreal Protocol in the late 1980s. Yet a lot of work remains to be done in the years ahead to achieve the ultimate goal of repairing the stratospheric ozone layer that shields the earth's ecosystems from harmful ultra-violet radiation (see the ECO's 2001/2002 annual report for greater detail).

An MOE proposal for a CFC phase-out regulation has languished on the Environmental Registry since March 2003. If adopted, the regulation would lead to a complete phase-out of the use of CFC-based refrigerants in Ontario. The commercial applications still using CFC-based refrigerant include mobile refrigeration, commercial refrigeration and certain types of air conditioning and chillers. In autumn 2005, the ECO met with representatives of the industries that would be affected by this regulation. These representatives stated that they were in support of MOE's proceeding with this initiative. The ECO and the industry association have since written to MOE encouraging the ministry to adopt this regulation. As of the close of the 2005/2006 reporting year, this initiative, regrettably, remains a proposal.

The ECO believes it is time for the Ministry of the Environment to help close the gap in the earth's stratospheric ozone layer by shoring up its enforcement efforts when members of the public present the ministry with a very reasonable opportunity to do so. Also, MOE should close the gap in the national regulatory framework on the phase-out of CFC-based ozone depleting substances. Most of Canada's other provinces and territories have already taken action equivalent to that of Ontario's proposed CFC phase-out regulation.

(For ministry comments, see page(s) 219.)

The *Aggregate Resources Act*: Conservation … or Unconstrained Consumption?

In response to concerns that the province is not doing enough to conserve aggregate resources and to ensure that aggregate sites are rehabilitated, the Pembina Institute and Ontario Nature requested that the Ministry of Natural Resources review the

rehabilitation requirements defined in Part VI of the *Aggregate Resources Act (ARA)* and the fee structure defined in O.Reg. 244/97. The applicants also requested a review of the need for a new policy – an aggregate resources conservation strategy. To support their application, they attached a copy of the report, "Rebalancing the Load: The need for an aggregates conservation strategy for Ontario," published by the Pembina Institute in January 2005.

Under the *ARA*, pit and quarry operators in southern Ontario and designated areas in northern Ontario are required to rehabilitate disturbed areas. Under O.Reg. 244/97, operators are required to pay an annual licence fee of six cents per tonne of excavated aggregate. Although the Ministry of Natural Resources continues to be responsible for enforcement and for issuing licences and permits and setting standards, the aggregate industry is now largely self-regulated under the Ontario Aggregate Resources Corporation (TOARC), whose sole shareholder is the Ontario Stone, Sand & Gravel Association (OSSGA). TOARC's responsibilities include gathering and publishing information related to the management of aggregate resources and rehabilitation, and auditing production data. Aggregate producers are responsible for rehabilitation of land they have disturbed, and TOARC is responsible for managing the portion of the six-cent annual licence fee – i.e., one-half of a cent per tonne – that is allocated to the rehabilitation of abandoned pits and quarries.

In our 2002/2003 annual report, the ECO reported that between 1992 and 2000, the average number of hectares disturbed by aggregate operations was more than double the number of hectares rehabilitated. By 2004, the aggregate industry had improved its rate of rehabilitation, but it had not been able to reduce the estimated backlog of 24,000 hectares of disturbed land that still require rehabilitation.

The applicants recommended that existing aggregate policies and legislation be updated to strengthen the rehabilitation requirements of the *ARA* and that aggregate operators not be allowed to expand their operations until they have made substantial progress on rehabilitating their disturbed areas.

The applicants noted that public information on aggregate supply and demand has not been updated since 1992 and that "Ontario needs to develop and implement a comprehensive strategy for the management and conservation of the province's aggregate resources," as previously recommended by the ECO and acknowledged in the *Places to Grow Act*. According to the applicants, aggregate fees have not increased since 1990, are too low to encourage the efficient use of the resource, and do not include environmental, social and economic costs. The applicants believe that the Provincial Policy Statement (PPS) under the *Planning Act* has given access to aggregate resources priority over other land uses so that aggregate producers can locate close

to their markets to minimize significant transportation costs. Instead, the applicants contend that conservation and recycling can help reduce the negative environmental effects of transporting heavy loads of aggregates long distances by road and that increasing fees will encourage "more efficient building and infrastructure design" and increase demand for alternatives.

Ministry response

MNR denied the applicants' *EBR* request for review. The ministry maintained that its Aggregates Resources Program minimizes the adverse effects of aggregate operations, promotes conservation, and influences land use planning by ensuring that aggregate resources are protected from "incompatible uses." MNR stated that Ontarians receive a fair return on Crown-owned aggregate resources, adding that the demand for aggregates will continue to grow despite measures to curb demand. The ministry pointed out that municipalities, which are responsible for almost 90 per cent of the roads in Ontario, are under no obligation to use recyclable materials when they resurface roads.

MNR advised the applicants that it had already agreed to conduct a review of the rehabilitation requirements of the *ARA* in response to an earlier *EBR* application requesting a simliar review. Pointing out that the *ARA* already requires sites to be rehabilitated, the ministry indicated that it would inform the applicants about the outcome of the earlier *EBR* application. (For a discussion of the earlier application, from a citizen's group called Gravel Watch, see pages 42-43.)

MNR also denied the application on the basis that the ministry had formed an inter-ministerial Aggregate Resources Conservation Strategy Committee, with representatives from the Ministries of Natural Resources, Environment and Transportation, to develop a draft strategy. MNR acknowledged that, as of April 2005, only preliminary discussions had been held. However, MNR added that because of the additional issues raised by the applicants, the ministry would invite the Ministries of Municipal Affairs and Housing, Public Infrastructure and Renewal, Northern Development and Mines, and Finance to send representatives to the committee. MNR also acknowledged that fees had not been increased in over 14 years and royalties for nearly 30 years, and advised that the committee will review the fees as part of its work. MNR indicated that it would advise the applicants on how they could participate in the review of the draft strategy after the public participation process had been determined.

MNR disputed the applicants' view that provincial policies have given aggregate operations priority over all other land uses, and cited recent legislation such as the Greenbelt Plan, the Niagara Escarpment Plan, and the *Oak Ridges Moraine Conservation*

Act, as well as changes to the PPS, as evidence that access to aggregate resources is not given priority over all other land uses. Furthermore, the ministry stated, because federal, provincial and municipal levels of government consume 50 per cent of aggregate production, provincial policy that advocates close-to-market sourcing of aggregates has reduced the costs to the Ontario taxpayer, lessened greenhouse gas emissions and traffic congestion.

Finally, MNR advised that "a lot of recycling" of aggregates occurs at the job site and that these numbers are not included in recycling statistics. The ministry emphasized that Ontario continues to be a leader in North America in recycling of aggregates, citing a 1992 study.

In a letter sent to the Minister of Natural Resources in May 2005, the applicants expressed their disappointment that MNR had denied their application and noted their belief that the province was not acting in a proactive manner.

ECO Comment

MNR was technically justified in denying this application for review since many of the matters raised by the applicants are already under review by either the Aggregate Resources Conservation Strategy Committee or by the ministry's review of the Gravel Watch application. However, the ECO is very concerned about the ministry's slow progress on both of these initiatives and has brought many of the concerns raised by the applicants to MNR's attention in the past.

The ECO is also very disappointed that MNR continues to take the position that aggregate operations are not given planning priority over other land use considerations. The revised PPS, which came into effect March 2005, states that "as much of the mineral aggregate resources as is realistically possible shall be made available as close to markets as possible" and "demonstration of need...shall not be required." In addition, the *ARA* clearly states that it applies "despite any municipal by-law, official plan or development agreement," and that MNR need only "have regard to" any other planning and land use considerations when approving applications for aggregate licences. The ECO is also very concerned that MNR relied on studies performed in the early 1990s, reinforcing the applicants' contention that more current information on the state of aggregate resources in the province is required.

In its response to the applicants, MNR stated that it expects that "the conservation strategy will be developed in an open and transparent manner," but that the Aggregate Resources Conservation Strategy Committee will decide how the public will participate

in the process. The ECO notes that policies developed by all three of the original ministries represented on the committee are subject to the public participation rights defined under the *EBR*. Due to the significance of this strategy, the ECO urges the committee to provide additional public participation opportunities beyond the minimum notice and comment requirements defined under the *EBR*.

Public concerns regarding aggregate operations have escalated over the years, and owners/operators are facing increasing pressure from neighbours to mitigate impacts on the environment and on the community. However, MNR has been slow to respond with a stronger management framework and has failed to put forth credible proposals that will both ensure the long-term sustainability of aggregate resources in Ontario and mitigate the impacts of aggregate operations on the environment.

(For additional information on this *EBR* application, see the Supplement to this report, pages 213-220. For ministry comments, see page(s) 220.)

Sewage Bypasses at the City of Kingston

In June 2005, two environmental organizations submitted an *EBR* application requesting that the Ministry of the Environment review all the certificates of approval (Cs of A) for the City of Kingston's sewage works. The applicants, representing the Canadian Environmental Law Association and Lake Ontario Waterkeeper, noted that Kingston is served by an aging sewage system, which often results in sewage bypass incidents. Such incidents have happened about 10 times a year – usually during rainfall or snow melt events that produce more stormwater than the treatment system can handle, resulting in untreated sewage discharging to waterways.

Of particular concern to the applicants was a major bypass incident on April 2 and 3, 2005, resulting in untreated sewage (including syringes, condoms, tampons and other debris) strewn along a kilometre of shoreline downstream. The applicants emphasized the inadequacy of the existing Cs of A, and recommended adding requirements to:

- provide timely warnings to downstream residents and communities.
- monitor and report on the movements of raw sewage released during bypasses.
- clean up sewage debris along watercourses and shorelines after incidents.
- provide compensation to those affected, or undertake mitigation measures.
- do public education on how to properly dispose of syringes, personal care products, etc.
- put in place measures to remove such items from sewage prior to bypasses.